

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 05-CR-0064

KEVIN L. GISTER,

Defendant.

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**ORDER**

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Defendant Kevin L. Gister was sentenced to ninety months in the custody of the Bureau of Prisons on August 15, 2005, for the crime of arson to a dwelling on the Menominee Indian Reservation in violation of 18 U.S.C. §§ 1152 and 81. Defendant Gister has now filed a document entitled “DEFENDANT, KEVIN L. GISTER’S INDEPENDENT ACTION” in which he seeks modification of the Judgment of Conviction. Specifically, Gister contends that the court lacked authority to impose a five year term of supervised release. He argues that under the applicable statutes, the maximum term of supervised release is three years.

The issue has been addressed in two prior orders by the court. I conclude for the reasons stated in this Court’s order denying his motion for leave to appeal, (Docket #47), that this Court lacks jurisdiction to grant the relief requested. A final Judgment of Conviction has been entered and the time allowed for appeal or for filing a motion under 28 U.S.C. § 2255 has expired. Defendant’s contention that this is an independent action within the meaning of *United States v. Beggerly*, 524 U.S. 38 (1998), ignores the fact that *Beggerly* involved application of Fed. R. Civ. P. 60. This is

a criminal action to which the rules of Civil Procedure do not apply. Accordingly, Gister's "independent action" is hereby dismissed.

**SO ORDERED** this 11th day of September, 2008.

s/ William C. Griesbach  
William C. Griesbach  
United States District Judge